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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,870	07/14/2003	Francis Thomas Brija	4219-031010	6947

7590 06/08/2005

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,870

Applicant(s)

BRIJA, FRANCIS THOMAS

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuss (U.S. 4,340,027). Fuss teaches a hinged cover shown in figures 1-3 having a cover body 20 and a wedge shaped hinged section 22. The wedge shaped hinged section is pivotally attached to the cover body along a central portion at 24.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuss (U.S. 4,340,027). Fuss discloses the claimed invention except for the perimeter of the hinged section being between about  $\frac{1}{4}$  to  $\frac{1}{3}$  the total circumference of the hinged cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fuss with the hinged section having a perimeter between about  $\frac{1}{4}$  to  $\frac{1}{3}$  of the total circumference, since it has been held that where the only difference between the prior art and the claims was a recitation of relative

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dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device, *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuss (U.S. 4,340,027) in view of Jarvis (U.S. 6,273,288)). Fuss discloses the claimed invention except for the notched cutout. Jarvis teaches that it is known to provide a hinged cover with a notched cutout (see element 120 in figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fuss with the hinged section having a notched cutout, as taught by Jarvis, so a utensil can extend therethrough and be retained therein.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuss (U.S. 4,340,027) in view of Jarvis (U.S. 6,273,288)). Fuss discloses the claimed invention except for inverted U of the perimeter. Jarvis teaches that it is known to provide a hinged cover with a perimeter having an inverted U shape (see element 36 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fuss with the perimeter having an inverted U shape, as taught by Jarvis, securely receive the rim and prevent movement of the cover with respect to the container.

Regarding claim 7, Fuss also does not teach the notched cutout. Jarvis teaches that it is known to provide a hinged cover with a notched cutout (see element 120 in figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified hinged cover of Fuss with the hinged section having a notched cutout, as taught by Jarvis, so a utensil can extend therethrough and be retained therein.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuss (U.S. 4,340,027) in view of Mestnik (U.S. 5,994,672). Fuss discloses the claimed invention except for the cover being

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made of 300 series stainless steel. Mestnik teaches that it is known to construct a cooking utensil from 300 series stainless steel (see col. 5 lines 59-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinged cover of Fuss being made of 300 series stainless steel, as taught by Mestnik, in order to give it the strength and corrosion resistance characteristic of this material.

### *Response to Arguments*

8. Applicant's arguments filed March 30, 2005 have been fully considered but they are not persuasive. Applicant argues that the claimed invention is for use with a self-serve cooking utensil. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

9. In addition, the recitation that the cover is “for a self-serve cooking utensil such as a soup or stock pot” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Claim preamble language may not be treated as a limitation where it merely states an intended use of the system and is unnecessary to define the invention, the

U.S. Court of Appeals for the Federal Circuit ruled May 8 (Catalina Marketing Int'l Inc. v. Coolsavings. com Inc., Fed. Cir., No. 01-1324, 5/8/02).

*Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

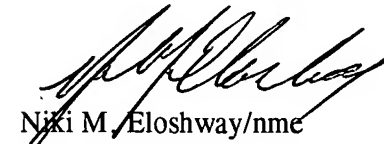
11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in the office on Thursdays and Fridays.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available

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through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Niki M. Eloshway/nme  
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June 2, 2005



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